

REMARKS/ARGUMENTS

Reconsideration and continued examination of the above-identified application are respectfully requested.

By way of this amendment, claims 1-22 and 54-56 are now canceled. Further, claim 40 has been amended to recite a flow of from 300 to about 1,000 mg/s. Support for this amendment can be found in claim 42 and, for instance, at paragraph [0044] of the present application. Since the lower limit of 300 mg/s was considered by the Examiner's examination of claim 42 and all other amendments are the cancellation of claims, this amendment should be entered since no new questions of patentability are raised by this amendment, nor is any further examination necessitated by this amendment. Further, this amendment places the application in condition for allowance or, at the very least, in a better condition for appeal. Accordingly, entry of this amendment is respectfully requested.

Rejection under 35 U.S.C. §103(a) – Kimmel et al.

At page 2 of the Office Action, the Examiner rejects claims 1-6, 12, 14, 16-21, 40, and 42-63 under 35 U.S.C. §103(a) as being anticipated by Kimmel et al. (U.S. Patent Application Publication No. US 2001/0036056 A1). The Examiner asserts that Kimmel et al. shows a niobium oxide powder having the various characteristics of the claims. The Examiner acknowledges that Kimmel et al. is silent with regard to phase purity, but the Examiner asserts that it would be obvious or inherent. With regard to the existence of different phases, the Examiner asserts routine optimization to find the right combination of suboxides. With regard to the flow of the powder, the Examiner asserts that this is inherent in the product, since similar particle size and surface areas are shown in Kimmel et al. This rejection is respectfully traversed.

The rejection of the claims will be addressed with respect to the currently pending claims, and especially independent claim 40, for which all other claims are dependent thereon (except for the withdrawn claims). The Examiner asserts that Kimmel et al. inherently shows the flow of claim 40. The applicants respectfully disagree. First, Kimmel et al. does not make any teaching or suggestion regarding flow rates or achieving acceptable flow rates. Furthermore, flow is based upon a number of factors. To assist the Examiner, six samples of niobium suboxides previously made in accordance with Kimmel et al. were pulled from the archives of the assignee, Cabot Corporation, and the flow rates were measured. Attached to this response is a Declaration under 37 C.F.R. §1.132 by one of the inventors that further explains this data. In summary, the flow rates of Kimmel et al. were well below 300 mg/g; whereas, in the present invention, high flow rates were achieved on the order of 300 mg/s and above. Accordingly, contrary to the Examiner's assertions, Kimmel et al. does not inherently show flow rates as set forth in claim 40. It is further pointed out that the methods of making the niobium suboxides of Kimmel et al. are quite different from the claimed invention's preferred methods. For instance, the preferred methods of the present invention, are set forth in claims 23 and 26-29, which involves a granulation step and the mixture is formed by milling and involves granulating comprising tumbling the materials in a wet state. This simply is not shown or suggested in Kimmel et al.

Accordingly, the claims are not taught or suggested by Kimmel et al. and the Examiner should withdraw the rejection.

CONCLUSION

In view of the foregoing remarks, the applicant respectfully requests the reconsideration of this application and the timely allowance of the pending claims.

U.S. Patent Application No. 10/786,621
Amendment After Final dated December 18, 2008
Reply to Final Office Action of July 23, 2008

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 03-0060. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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Attachment: Declaration under 35 C.F.R. §1.132 (2 pages)